to be immaterial but the amounts to be paid under the agreement were not fixed sums and had to be ascertained month by month under the terms of the agreement. I am satisfied that the learned Magistrate was right in holding that the payments made to the respondent did not constitute an annuity. Similarly in the case of *In re Shaw, Smith v. Shaw*[2], it was held that a fixed sum of £300 per annum to be paid to the defendant was an annuity and that the administratrix was entitled to deduct and retain the income tax which became payable half yearly. That case seems to me to have no bearing on the facts of the case with which I am now concerned inasmuch as I hold that payments to be made to the respondent under an agreement did not constitute an annuity.

I do not think the decision in the case of *In re Janes' Settlement, Wasmuth v. Janes*[3] carries us any further.

I agree with the learned Magistrate that the respondent is entitled to judgment for the amount claimed and for interest and costs set out in the decree, and this appeal will be dismissed with costs.

*Appeal dismissed.*

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## PUBLIC PROSECUTOR v. P. LOUIS

[A. Cr. J. (Thomson J.) September 1, 1955]

[Ipoh — Criminal Revision No. 34 of 1955]

*Emergency Regulations, 1951, reg. 17EA(5) — Removing restricted article from a food restricted area — Meaning of synthetic cloth.*

In this case the accused was convicted on a charge of removing a restricted article namely cloth from a food restricted area in contravention of reg. 17EA(5) of the Emergency Regulations. The cloth in question consisted of "printed spun rayon muslin" and the Deputy Public Prosecutor referred the matter to the High Court on the question whether the cloth in question was a restricted article within the meaning of the Regulations.

Held: rayon can be regarded as synthetic cloth and therefore comes within the definition of a restricted article in the Regulations.

*Case referred to:—*

(1) *Brierley v. Philips* (1947) 1 All E.R. 269, 270.

CRIMINAL REVISION.

**Thomson J.** : — The accused in this case was convicted in the Magistrate's Court at Sungei Siput on a charge of removing a restricted article "to wit, two yards of cloth" from a food restricted area in contravention of Regulation 17EA(5) of the Emergency Regulations. He pleaded guilty and was convicted and fined $20. The cloth in question was confiscated.

After his conviction, it was ascertained that the cloth in question consisted of what is called "Printed Spun Rayon Muslin" and, as the Deputy Public Prosecutor was in some doubt as to whether such a substance was a restricted article within the meaning of the Regulation, he invited me to consider the matter in revision.

In Regulation 17EA as originally enacted the expression "restricted article" was defined as meaning a long list of specified articles which had little if anything in common with each other including "cloth and canvas".

As regards "cloth", if it had not been distinguished from "canvas", this definition would have been reasonably intelligible and I do not think that in practice any Magistrate or indeed any other person would have experienced difficulty in deciding whether an article was or was not cloth.

Legal Notification No. 169 of 1954, however, substituted for the word "cloth" in the definition of "restricted article" a list of types of cloth. It is not necessary to quote that list of types of cloth because some time later by Legal Notification No. 545 of 1954 it was replaced by the following: —

"(f) cloth of the following descriptions and clothing made therefrom, namely —

(i) pliable plastic or synthetic cloth, synthetic sheeting or material including imitation thereof;

(ii) cellular cloth;

(iii) drill of all colours; and

(iv) dyed shirting and sheeting."

As far as the present case is concerned, I do not think there can be any doubt that printed spun rayon muslin falls within that definition. The *Encyclopaedia Britannica* says that rayon is frequently called artificial silk and describes it as follows :—

"Rayon is the generic name of filaments made from various solutions of modified cellulose by pressing or drawing the cellulose solution through an orifice and solidifying it in the form of a filament or filaments, by means of some precipitating medium."

In all the circumstances, I think that such a substance can safely be regarded as synthetic cloth.

That concludes the point before me but I feel compelled to observe that Regulation 17EA as it now stands places an almost impossible burden on Magistrates who after all are not chemists or persons engaged in dealing in textiles. The definition does not include all substances which fall within the ordinary meaning of cloth. If it did, although its terms might be regarded as somewhat pleonastic, there would be little difficulty. But it does not include all varieties of cloth. For example, the question of whether material which is dyed or coloured is included would appear to depend

on the question of whether or not it is synthetic. It would appear that a white shirt is not included if it is made of cotton but is included if it is made of cellular cloth or nylon or artificial silk. Thus, for example, as regards the ordinary wear of Chinese women of the domestic servant class the white upper garment would appear not to be included unless made of artificial silk or some other synthetic cloth while the black lower garment is included irrespective of the material of which it is made. Again, if the question were to come before me I should find the very greatest difficulty in deciding whether the definition included white cotton cloth with a coloured pattern printed upon it.

These questions are not academic. The rule of the criminal law is that the prosecution has to prove its case. In particular, in any prosecution under Regulation 17EA it has to prove that the article moved is a "restricted article" and comes within the statutory definition. How this can be proved and how any Magistrate can be satisfied on the point in the absence of expert evidence, I fail to see. I trust that some attempt will be made to render the Regulations more easily intelligible. Until that is done, I can only impress upon Magistrates the need for the greatest care in dealing with prosecutions under it where the article concerned is any sort of cloth.

Before parting from the case I cannot refrain from quoting the following passage from the judgment of Lord Goddard C.J. in the case of *Brierley v. Philips*[1] :—

"If Orders are made to create criminal offences, it is surely desirable that they should be stated in language which the persons who may commit the offences — in this case, as I say, humble people like cottagers — can understand. It is a very serious thing to produce Orders or regulations, whether under Defence Regulations or anything else, creating offences which can be dealt with as very serious matters, if they are couched in language which does not make clear whether a person is committing an offence or not. I am certainly not prepared ever to support Orders and to find people guilty of criminal offences when the Orders which they are charged with violating are couched in language which is open to all sorts of meanings and causes all sorts of difficulties, so that the unfortunate people cannot know whether they are acting legally or not."

*Conviction confirmed.*

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## MOHAMED BIN IBRAHIM v. REGINA

[A. Cr. J. (Whyatt C.J.) September 27, 1955]

[Singapore — Magistrate's Appeal No. 100 of 1955]

*Criminal Procedure — Summary trial — Cross-summonses — Consolidated and heard together — Failure of justice — Criminal Procedure Code, 1955, s. 440.*

In this case there were two cross-summonses for voluntarily causing hurt which with the consent of counsel for the parties were consolidated and heard together by the learned Magistrate. After hearing both parties and their witnesses, the learned Magistrate convicted the appellant. The appellant appealed.

**Held:** (1) where there are two cross-summonses in which the complainant in one is the accused in the other the Magistrate has no jurisdiction to hear them together; (2) even if it were correct to regard the procedure adopted in the present case as a mere irregularity, it could not be said with reasonable certainty that the irregularity had not occasioned a failure of justice and therefore it could not be cured by the provisions of s. 440 of the Criminal Procedure Code.

[**Editorial Note:** The Court of Appeal in the Federation of Malaya recently laid down the same principle in Papathy & Anor. v. Public Prosecutor (Ipoh — F.M. Criminal Reference No. 2 of 1955). That decision will be published in due course.]

*Cases referred to:—*

(1) *Charter Singh v. Public Prosecutor* 1 M.C. 132.

(2) *Asiah binti Beginda Raja v. Public Prosecutor* 1 M.C. 153.

MAGISTRATE'S APPEAL.

*L. Rayner* for the appellant.

*G. S. Hill* (Crown Counsel) for the respondent.

**Whyatt C.J.** : — Counsel for the Crown did not support the conviction in this case. The attention of the Court was drawn to two cases reported in 1 Malayan Cases (*Charter Singh v. Public Prosecutor*[1] and *Asiah binti Beginda Raja v. Public Prosecutor*[2]) which clearly established that where there are two cross-summonses in which the complainant in one is the accused in the other the Magistrate has no jurisdiction to hear them together.

The Court invited counsel for the appellant and for the Crown to deal with the view expressed by the Editor of *Mallal's* Criminal Procedure (3rd Edition) at p. 229 that if the accused consents to cross-summonses being heard together, and subsequently appeals, he will, in view of section 448 (now section 440) of the Criminal Procedure Code not succeed in his appeal. Counsel for the appellant pointed out that the Editor had cited no authority in support of his view and submitted that the procedure adopted in the present case was not an "irregularity" but an "illegality" and therefore could not be cured by the provisions of section 448 (now section 440) of the Criminal Procedure Code. Counsel for the Crown submitted that even if it were correct to regard the matter as a mere irregularity, it could not be said with reasonable certainty that the irregularity had not occasioned a failure of justice in the present case, and that being so, the provisions of the curing section should not be invoked.